SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1034

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Petitioners,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS, and ELLSWORTH E. LORY,

Respondents.

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UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JOHN F. TINKER and MARY BETH TINKER, minors, by their father and next friend, LEONARD TINKER, and CHRISTOPHER ECKHARDT, minor, by his father and next friend, WILLIAM ECKHARDT,

Plaintiffs,

vs.

THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, THE BOARD OF DIRECTORS OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, ORA E. NIFFENEGGER, MRS. MARY GREFE, ARTHUR DAVIS, L. ROBERT KECK, GEORGE CAUDILL, JOHN R. HAYDON, MERLE F. SCHLAMPP, DWIGHT DAVIS, ELMER BETZ, GERALD JACKSON, MELVIN BOWEN, DONALD WETTER, CHESTER PRATT, CHARLES ROWLEY, RAYMOND PETERSON, RICHARD MOBERLY, VERA TARMANN, LEO WILLADSEN, DONALD BLACKMAN, VELMA CROSS, and ELLSWORTH E. LORY,

Defendants.

Civil No. 7-1810-C(1)

Following is a list of Docket Entries in the District Court:

1966.

Mch. 14 Filed Complaint.

" 15 Issued Summons and delivered to U. S. Marshal.

" 30 Filed Application of defendants for extension of time to plead.

"	31	Filed Order granting defendants to May 1, 1966 to respond. Stephenson, J. Copies mailed to attorneys.
Apr.	12	Filed Summons with Marshal's return on Gerald Jackson, personally, 3/17/66; on Charles Rowley, personally on 3/16/66; Donald Blackman, personally, on 3/16/66; Velma Cross, personally 3/16/66; Chester Pratt, personally on 3/16/66; Leo Willadsen, personally, 3/16/66; Richard Moberly, on 3/16/66; (personally); Vera Tarman, personally 3/16/66; Donald Wetter, personally, 3/16/66; Ellsworth E. Lory, personally, 3/16/66; Dwight Davis, personally, 3/16/66; Raymond Peterson, personally, 3/16/66; Elmer Betz, personally, 3/16/66; Gerald Jackson, endeavored to serve, 3/16/66; Melvin Bowen, personally 3/16/66; Ora E. Niffenegger, personally 3/16/66; (school board member) Arthur Davis, School Board Member personally 3/16/66; L. Robert Keck (school board member) personally 3/16/66; John R. Haydon (school board member) endeavored to serve 3/16/66; Merle F. Schlampp (school board member) personally 3/18/66; George Caudill (school board member) personally 3/18/66; Mrs. Mary Grefe (school board member) personally 3/21/66; John R. Haydon (school board member) personally 4/1/66; Marshal's fees $68.64.
"	29	Filed Answer.
May	24	Filed Order for Pretrial Conference 5/31/66, 11:00 A.M. Stephenson, J. Copies mailed to attorneys.
"	31	Filed Order on Pretrial Conference. Defendant must file list of witnesses by 7/1/66. Case is set for trial 7/25/66 at 9:30 A.M. Anticipated length of trial is one day, not to exceed two days. Trial briefs will be filed by 7/21/66. Parties are given 10 days to file objections to matters herein ordered. Stephenson, J. Copies to counsel.

"	31	Filed Pretrial Stipulation.
"	31	Filed list of plaintiffs' witnesses.
June	27	Filed defendants' list of witnesses.
July	15	Filed defendants' motion for continuance and affidavit of defendant, Ora E. Niffenegger.
"	18	Filed plaintiffs' resistance to defendants' motion for continuance.
"	21	Filed defendants' trial brief.
"	21	Filed Deposition of Mary Beth Tinker taken on behalf of defendants. (loose in file)
"	21	Filed Deposition of John Frederick Tinker, on behalf of defendants. (loose in file)
"	22	Filed trial brief of plaintiffs.
"	22	Filed Deposition of Leonard Edward Tinker, Jr., taken on behalf of defendants. (loose in file)
"	22	Filed Deposition of Christopher Paul Eckhardt, taken by defendants.
"	25	Filed Clerk's Court Minutes re: trial to court. 1st day. entered: Opening Statements waived by both parties; evidence for plaintiffs proceeded with and concluded at 3:25 P.M.; evidence for defendants proceeded with and concluded at 3:40 P.M.; oral arguments at 9:30 A.M. 7/26/66. Stephenson, J. (23 OJ 191).
"	26	Filed Clerk's Court Minutes with list of witnesses and exhibits attached re: trial to court 2nd. day; entered: Oral arguments by counsel proceeded with and concluded; Court considers cause under submission. Stephenson, J. (23 OJ 196)

" 26 Filed defendants' exhibits numbered 1, 2, 3, 4, 5, 6, 7 & 8.

" 28 Filed Melvin Durgin's reporter's notes on trial proceedings. (loose in back room)

Sept. 1 Filed Memorandum Opinion. Plaintiffs' request for injunction and nominal damages are denied. Judgment will enter accordingly. Stephenson, J. (23 OJ 272). Copies mailed to attorneys.

" 1 Filed Judgment. Entered: It is Ordered and Adjudged that plaintiffs' complaint is dismissed at plaintiffs' costs. Stephenson, J. (23 OJ 273) Copies mailed to attorneys.

Sept. 28 Filed Plaintiffs' Notice of Appeal. Des Moines, Iowa, September 28, 1966. I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Messrs. Allan A. Herrick, Herschel G. Langdon, Richard G. Langdon and Philip C. Lovrien, of Herrick, Langdon, Sandblom & Belin, 300 Home Federal Building, Des Moines, Iowa, attorneys for defendants, this 28th day of September, 1966. F. E. Van Alstine, Clerk U. S. District Court, by /s/ Esther Lyons, Deputy Clerk.

Oct. 14 Filed Transcript of Trial Proceedings.

" 17 Filed Motion to Withdraw File by Plaintiffs.

" 17 Filed Order. Plaintiffs' Attorney is authorized to withdraw for period not to exceed 24 hours official file of this matter from office of Clerk for purpose of copying briefs therein. Stephenson, J. (Copy to Attys.) (file returned)

Oct. 28 Mailed certified copy of Notice of Appeal and certified copy of Relevant Docket Entries to Robert C. Tucker, Clerk, U. S. Court of Appeals, St. Louis, Missouri; also mailed copy of Relevant Docket Entries to Dan Johnston, of Jesse, LeTourneau, Johnston & Swanson, 1103 Savings &

Loan Bldg., Des Moines, Iowa, Attorneys for Plaintiffs, and to Messrs. Allan A. Herrick, Herschel G. Langdon, Richard C. Langdon and Philip C. Lovrien, of Herrick, Langdon, Sandblom & Belin, 300 Home Federal Building, Des Moines, Iowa, Attorneys for Defendants.

Nov. 2 Filed Bond for Costs on Appeal—State Surety Company, Surety—$250.00.

" 2 Filed Plaintiffs' Designation of Record on Appeal.

" 4 Filed Certificate of Mailing of Designation of Record on Appeal and of Statement of Points Relied Upon for Appeal by plaintiffs' attorneys.

" 4 Filed Plaintiffs' Statement of Points Relied Upon for Appeal.

On May 14, 1966, the following Complaint was filed in the United States District Court for the Southern District of Iowa, Central Division:

Plaintiffs invoke jurisdiction granted this Court in Title 42, United States Code, Section 1983.

I.

In support of their Complaint and Prayer for a permanent injunction, Plaintiffs state to the Court:

1. During all times mentioned herein each plaintiff was, and is now, a citizen of the United States, residing in Des Moines, Polk County, Iowa.

2. Plaintiffs John F. Tinker and Mary Beth Tinker are minors suing by their father and next friend, Leonard Tinker; Plaintiff Christopher P. Eckhardt is a minor suing by his father and next friend, William Eckhardt.

3. Now, and at all times mentioned in this Complaint:

(a) The defendant Des Moines Independent Community School District, hereafter referred to as Defendant District, is duly organized pursuant to Chapter 274, Code of Iowa, 1962.

(b) The defendant Board of Directors of the Des Moines Independent Community School District, hereafter referred to as Defendant Board, is the board of directors of Defendant District organized pursuant to Chapters 274 and 279, Code of Iowa, 1962, with all the powers and duties delegated to such boards therein.

(c) The defendant Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R. Hayden, and Merle F. Schlampp are duly elected, qualified, and acting directors of the Defendant District, acting in the course of their statutory duties as directors as provided by the laws of Iowa, and are sued individually, and as directors.

(d) The defendant Dwight Davis is the duly appointed, qualified, and acting superintendent of Defendant District, acting in the course of his duties as superintendent, pursuant to orders and directives of Defendant Board, and is sued individually and as superintendent.

(e) The defendant Raymond Peterson is the duly appointed, qualified, and acting Director of Secondary Educa-

tion of Defendant District, acting in the course of his duties as such pursuant to orders and directives of Defendant Board and Defendant Superintendent, and is sued individually and as Director of Secondary Education.

(f) The defendants Charles Rowley, Elmer Betz, Gerald Jackson, Melvin Bowen, Donald Wetter and Chester Pratt are duly appointed, qualified and acting principals of schools in Defendant District, acting in the course of their duties as principals pursuant to orders and directives of Defendant Board and Defendant Superintendent, and are sued individually and as principals of Defendant District.

(g) The defendants Richard Moberly, Vera Tarman, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory, are duly appointed, qualified and acting teachers, counsellors, or assistant administrators, and employees and agents of Defendant District, acting in the course of their duties as such pursuant to orders and directives of Defendant Board, Defendant Superintendent, and/or Defendant Principals, and are sued individually and in their aforesaid official capacities in Defendant District.

4. Now and at all times mentioned in this Complaint, plaintiffs John Tinker, Christopher Eckhardt, and Mary Beth Tinker are duly enrolled and qualified scholars, pupils, and students in the Defendant District.

5. On or about December 11, 1965, the plaintiffs John Tinker, Christopher Eckhardt, and Mary Beth Tinker decided to wear bands of black cloth on their arms to express the following points of view:

(a) That said plaintiffs mourn the fatal casualties of all combatants, and others, in the warfare then and now existing in South-east Asia commonly called "The Viet Nam War".

(b) That said plaintiffs supported the proposal of United States Senator Robert F. Kennedy that a cessation of warfare or truce proposed for Christmas Day, 1965, be extended indefinitely.

6. On or about December 14, 1965, defendants Betz, Jackson, Bowen, Rowley, and Wetter, principals, met with defendant Peterson, and decided that scholars who wore arm bands in facilities of defendant district would be told by officials and employees of defendant district to remove the arm bands and, failing or refusing to remove same, be suspended as scholars in defendant district by authority conferred by Section 282.4, Code of Iowa, 1962.

7. On or about December 15, 1965, the decision alleged in paragraph six (6) of this Complaint was made known by a general announcement to scholars, officials, and teachers of Defendant District, and to all minor plaintiffs, and defendants herein, by Defendant District.

8. On or about December 15, 1965, defendant Richard Moberly, teacher, announced to his classes that no scholar could attend his classes wearing an arm band.

9. On or about December 16, 1965, while wearing a black arm band in accordance with the decision alleged in paragraph five (5) of this Complaint, plaintiff Mary Beth Tinker attended Warren Harding Junior High School, a school in Defendant District, where said plaintiff was enrolled. She wore the band throughout the forenoon hours, lunch, and the first half hour of class after lunch without incident. Plaintiff entered her second class after lunch, taught by defendant Moberly, and found on her desk a card ordering plaintiff to report to the office of the principal of said school. Defendant Leo Willadsen, vice principal, acting under the direction and authority of defendant Chester Pratt, principal, ordered plaintiff to remove

her arm band. Plaintiff immediately obeyed this order and returned to her class. Defendant Vera Tarman then appeared in the class plaintiff was attending and "suspended" plaintiff from school, directing plaintiff to return next day with her parents. Plaintiff Mary Beth Tinker remained out of school until January 4, 1966, and continued during that time to express her aforementioned beliefs by wearing a black arm band.

10. On or about December 16, 1965, plaintiff Christopher Eckhardt, while wearing a black arm band in accordance with the decision alleged in paragraph five (5) attended Roosevelt High School, a school in defendant district, where he was a student. Knowing of the policy alleged in paragraph six (6), said plaintiff went immediately to the office of defendant Charles Rowley, principal. Defendant Donald Blackman, vice principal, and defendant Velma Cross asked plaintiff to remove his arm band. Defendant Cross told plaintiff wearing the arm band would prevent his entering college.

Defendant Blackman then ordered plaintiff to leave school, and informed plaintiff his parents would receive a suspension notice by mail. Defendant further stated that plaintiff's parents would have to contact defendant Blackman before plaintiff could re-enter school. Plaintiff left school and did not re-enter until January 4, 1966, continuing throughout this period of time to wear the arm band for the aforestated reasons.

11. On or about December 17, 1965, plaintiff John Tinker, while wearing a black arm band in accordance with the decision alleged in paragraph five (5), attended North High School, a school in Defendant District in which said plaintiff was enrolled. Plaintiff wore the arm band throughout the forenoon hours and lunch without incident.

In the first class room hour after lunch, defendant Ellsworth E. Lory, teacher, told plaintiff to go to the office of defendant Donald Wetter, principal of North High School. Defendant Wetter told plaintiff to take off the arm band and, plaintiff refusing, to leave school. Defendant told plaintiff he would be allowed to return to school if plaintiff removed the arm band or the policy alleged in paragraph six (6) was revoked. Plaintiff remained out of school until January 4, 1966, continuing throughout this period of time to wear the arm band for the aforestated reasons.

12. In wearing arm bands as alleged in paragraphs nine (9), ten (10), and eleven (11), plaintiffs Mary Beth Tinker, Christopher Eckhardt, and John Tinker were lawfully and peacefully engaged in the exercise of the right of free speech secured for them by Amendments One and Fourteen of the United States Constitution.

13. The aforesaid acts of defendants, and each of them, then and now, deprive defendants, and each of them, of their right to free speech and said acts are, therefore, in violation of Amendments One and Fourteen of the Constitution of the United States and Title 42 United States Code Section 1983.

14. The deprivations of plaintiffs' rights as alleged were and are committed by defendants, and each of them, under color of statutes, ordinances, regulations, customs, or usages of the state of Iowa.

15. Unless restrained, defendants will continue to deprive plaintiffs of their constitutional rights as alleged in this Complaint causing plaintiffs irreparable harm for which they have no adequate remedy at law, and further, to attempt to redress the aforesaid deprivations of constitutional rights by separate actions at law would cause a

multiplicity of vexatious, expensive, annoying litigation which the injunction here sought will avoid.

WHEREFORE, plaintiffs pray for a permanent injunction restraining defendants, and each of them, from suspending plaintiffs Mary Beth Tinker, Christopher Eckhardt, and John Tinker, from Defendant District, or otherwise disciplining said defendants so as to deprive them of their rights to free speech as secured for them by the United States Constitution; further restraining defendants, and each of them, from in any manner using their authority under the laws of Iowa to interfere with plaintiffs in the exercise of their right to free speech; and for such further relief as the Court deems equitable, and that costs of this action be charged to defendants.

II

In support of their Complaint and Prayer for nominal damages, Plaintiffs state:

1. Paragraphs one (1) through fourteen (14), inclusive, of Division I of this Complaint are incorporated herein and realleged.

2. As a direct and proximate result of the aforesaid conduct of defendants, and each of them, plaintiffs suffered mental anguish, loss of educational benefits, embarrassment, and loss of constitutional rights, the value of which is impossible to ascertain.

WHEREFORE, plaintiffs demand judgment from defendants in the nominal sum of one dollar ($1.00) and that costs of this action be charged to defendants.

On April 29, 1966, the following Answer was filed:

FIRST DEFENSE

1. The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

1. Defendants admit the allegations of paragraphs 1 and 2 of plaintiffs' complaint.

2. Defendants specifically deny each allegation of paragraph 3 and subparagraphs (a) to (g), inclusive, thereof, except they admit subparagraphs (a) and (b) of paragraph 3, and admit that the respective defendants are the directors and officers or employees respectively of Des Moines Independent Community School District.

3. Defendants admit the allegations of paragraph 4 of plaintiffs' complaint.

4. Defendants specifically deny the allegations of paragraph 5 and subparagraphs (a) and (b) thereof.

5. Defendants specifically deny the allegations of paragraphs 6, 7, and 8 of plaintiffs' complaint, except they do admit that there was an announcement that black arm bands not be worn by students while attending classes.

6. Defendants specifically deny the allegations of paragraph 9 of plaintiffs' complaint, except they admit that the plaintiff Mary Beth Tinker attended Warren Harding Junior High School wearing a black arm band and was directed to report to the office of the principal, and state that for most of the time following December 16, 1965, to January 4, 1966, it was Christmas vacation and no school was held in any of the Des Moines school buildings.

7. Defendants specifically deny the allegations of paragraph 10 of plaintiffs' complaint, except they admit the plaintiff Christopher Eckhardt did wear a black arm band

while attending Roosevelt High School where he was a student, and that he was asked to remove the arm band and refused to do so, and was advised that he was suspended from school.

8. Defendants specifically deny the allegations of paragraph 11 of plaintiffs' complaint, except they admit that the plaintiff John Tinker did wear a black arm band while attending classes at North High School and was advised to go to the office of the principal and was requested to take off the arm band, which he refused to do, and that he was advised that he would be allowed to return to school if he removed the arm band, and that most of the time while he remained out of school was Christmas vacation.

9. Defendants specifically deny each of the allegations of paragraphs 12, 13, 14 and 15 of plaintiffs' complaint, and allege the fact to be that the wearing of said arm bands was done in direct violations of the reasonable rules for the regulation of conduct of students at the various schools involved, and to permit continued violation of said rules and regulations threatened a breakdown in the discipline and orderly conduct of classes in said respective schools. That whatever was done by any of the defendants was done in an effort to properly regulate the conduct and maintain order in the respective schools.

WHEREFORE, defendants pray that the plaintiffs' complaint be dismissed at plaintiffs' cost.

On May 31, 1966, the following Pre-Trial Stipulation was filed:

The parties to the above entitled action, by their attorneys, Jesse, LeTourneau, Johnston & Swanson for plain-

tiffs, and Herrick, Langdon, Sandblom, and Belin for defendants, make the following Pre-Trial Stipulation pursuant to the order of the Court entered May 24, 1966.

I

This action was commenced alleging jurisdiction conferred by 42 USCA 1983, plaintiffs contending they were suspended from defendant school district for participating in conduct privileged by Amendment Fourteen on the U. S. Constitution, to wit: wearing black cloth arm bands to express a political idea. Plaintiffs seek an order restraining defendants from disciplining them so as to deprive them of their rights to free speech: and seeking nominal damages.

II

The following facts are hereby stipulated as true and undisputed in this action.

a. Prior to December 16, 1965, defendant Peterson and defendants Rowley, Betz, Jackson, Bowen, and Wetter met in their capacities as officials of defendant district and decided that students of defendant district would be prohibited from wearing black arm bands while in school.

b. Prior to December 16, 1965, the aforestated prohibition was announced to students and employees of defendant district.

c. On December 16, 1965, plaintiffs Christopher Eckhardt and Mary Beth Tinker wore black arm bands while attending schools in defendant district and were told to leave school until such time as they removed the arm bands.

On July 25, 1966, evidence was taken in the matter as follows:

PLAINTIFFS' CASE

JOHN FREDERICK TINKER, Plaintiff, testified as follows:

Direct Examination by Mr. Johnston.

My name is John Frederick Tinker, 704 Grandview; 15 years old. My parents are Leonard Edward Tinker and Mary Jean Tinker. My father is Peace Education Secretary for the American Friends Service Committee. He is a Methodist Minister, officially assigned by the Bishop to the American Friends Service Committee. I am in the 11th grade, at North High School in Des Moines, Iowa.

During the month of December, 1965, I decided to participate with several other people in a witness or demonstration of views that I have by wearing a black arm band over the holiday season. On Wednesday evening, December 15, I received a phone call from Ross Peterson, or Bruce Clark, I am not sure which one. Bruce and Ross were both members of the Liberal Religious Youth Organization at the Unitarian Church. They told me that some people had met and decided that they were going to wear arm bands during the holiday season to mourn the dead in Viet Nam and to hope for a Christmas truce that might be extended into an open ended truce. Wednesday evening they came over to my house and gave me copies of a document entitled "We Mourn" which I read and agreed with. They talked with mother and father and my sister Mary Beth and I decided to wear an arm band.

The idea of an indefinite truce was originally Robert Kennedy's and I hoped that such a truce would stop the killing and might lead to a peaceful settlement in the war. In addition to the wearing of the arm bands there was going to be a fast on New Years Eve and one other day and I did fast during those days. Also, there was a worship serv-

ice at the Unitarian Church on New Years Eve, but I am not sure if that was directly tied with the arm band demonstration.

I have been in several demonstrations against the war and several Civil Rights demonstrations. The subject of peace and the subject of the war in Viet Nam and the political and moral implications of it are discussed quite often in my home. These are concerns which I share with my parents and most of my brothers and sisters although I do not subscribe to all of the views of my parents.

I attend a Friends meeting and have been so attending for four years. The subjects of the conduct of war in Viet Nam and the roll of warfare and international relations and international policy are discussed at the Friends meeting quite frequently.

I had not attended any meetings concerning the wearing of arm bands prior to the one I discussed earlier on Wednesday night, but I attended most of the meetings concerning this after Wednesday.

Most of the others wore arm bands on Thursday December 16, 1965, I didn't feel that I should just wear it against the will of the principals of the high schools without even trying to talk to them first. I believe I first learned they were opposed to wearing the arm bands on Wednesday night and so I didn't wear one on Thursday because I hoped we could try to talk to the school board. Thursday evening we had a meeting with the students who had worn them Thursday and other people who were interested and the President of the school board, Mr. Niffenegger, was called, to ask him if we could meet with the school board and talk to them about the arm bands. He said no not before the next regularly scheduled meeting of the school board. I first wore an arm band on Friday, December 17. That was a school day and I wore the arm band to school.

The first thing in the morning we had orchestra practice and I was almost late for that and was on a tight schedule, so I didn't have time to put my arm band on for that period. Nor did I have time to put it on when I went to home room, after orchestra. I put the arm band on after home room. I arrived at school around 7:30 A. M. and put the arm band on about 8:30 A. M.

The arm band was a strip of black cloth about 2 inches wide. I wore it on the left sleeve of my jacket the first part of the day and then on my shirt the second part of the day.

The instructor in the first class I wore the arm band was Mr. Thompson. I'm not sure Mr. Thompson saw me wearing the arm band. He made no comment about it. In his class we engage in group work and we were working out some sort of play and Mr. Thompson was out of the room much of the time.

I felt self-conscious about wearing the arm band. We students were talking about the play we were going to put on and some of the other students talked to me about the arm band and asked me why I was wearing it. I told them why and some of them didn't think I should do this, but they thought I should have the right to if I wanted to. This discussion took place on and off during the class period. There was no other activity about the arm band during this first class.

The next class I went to was algebra class. I got there about 10:30 and the professor was Mr. Worden. I don't believe he saw the arm band either; he made no comment about it and there was no discussion in his class at all about the arm band.

"I sit in the back of the class and I don't think anybody saw it. On my way to algebra class I don't remember

but I am sure probably—somebody probably said something about it." I was on time for my algebra class. The next class I attended was gym during the third hour period. I wore the arm band on the way to gym class and there was no discussion of that on the way to class. There was hardly no one around. I wouldn't say for sure whether there was any discussion about it in the halls on the way to the class or not. I did not wear the arm band when I had my gym clothes on, and there was no discussion of it in the gym class itself. There was some discussion before. After gym class some of the students were making fun of me for wearing it. Others, who were my friends, said they didn't want me to get in trouble. Two or three boys made remarks in the locker room that were not very friendly. This lasted for perhaps 3 or 4 minutes. They did not threaten me with any physical harm.

After gym class I had half an hour for lunch. I ate lunch in the student center with several other students with whom I eat frequently. These people warned me in a friendly manner to take the arm band off. There was one student with whom I had had a feud in the 7th grade who was making smart remarks for about 10 minutes. There were 4 or 5 people with him standing milling around. There were quite a few other students standing and milling around the lunch room. To my knowledge there were no threats to hit me or anything like that. At no time was I in fear that they might attack me or hit me in the student center because there were too many people there. I believe there were faculty members or school staff members there most of the time. No faculty member or staff member entered into any of this activity concerning the arm band in any way. A football player named Joe Thompson told the kids to leave me alone; that everybody had their own opinions.

After lunch I went to 4th period which is English with Mr. Lory. I still had the arm band on and when I arrived at the class Mr. Lory said "they are waiting for you at the office." I went down to the office; it was Mr. Wetter's office. Before arriving there I made a phone call to my home. I think it was my father who answered. My parents had told me if anything went wrong or I got in trouble to call. They knew that I would be wearing the arm band. Mr. Wetter is principal of North. I walked into his office and he said "I suppose you know I have to ask you take it off," and I said yes I do. He said "I don't suppose you will" or something like that and I said "no" and he said "well, I guess you know you can't wear it in school". I can't remember exactly. He said it was something about a hierarchy, and that he was following orders from higher up. When I told him that I was not going to take the arm band off he told me I would have to leave school but wouldn't be suspended. He said that as soon as I took the arm band off or there was a different ruling on it that I could come back to school.

Mr. Wetter said for his own personal reasons he wanted to know why I was wearing the arm band so I told him the same thing; mourning the dead, and hoping for a Christmas truce. I guess he was in World War II and he told me about that and he made one statement that I am not sure what he meant. He said "I suppose as soon as you leave that you'll call the newspaper" and I told him that we didn't call the newspaper to begin with; that it was the school board that had made the newspapers.

My father arrived at the school and talked to Mr. Wetter for quite awhile, in my presence. We left and it was Tuesday, January 4, 1966, when I returned to school. I never received a notice of official suspension.

I had been in school in Des Moines about 8 years before this suspension and had never been suspended or been sent home before for any purpose except being sick.

I hold the same philosophies and moral beliefs now that caused me to wear the arm band and if I were to return to school this fall or tomorrow I would still desire to have the right to wear an arm band to express those views.

Cross-Examination by Mr. Lovrien.

It was Wednesday night when Ross Peterson and Bruce Clark came over to my house to discuss the situation. My parents were present. Ross and Bruce told me about the arm bands and I am not sure if there was a definite decision whether or not to wear an arm band. I can't remember for sure but to my knowledge it was the first time I had heard about the idea of wearing arm bands relative to the war in Viet Nam. I hadn't made a definite decision to wear an arm band on Wednesday evening. There had been a meeting at the Eckhardt's on a Saturday night before; I believe that would have been the 11th. I couldn't say for sure whether my mother attended that meeting or not. There could have been a discussion about it in my family before Wednesday, but I can't remember.

I used a piece of black cloth. I don't know where I got it. But I ironed it neatly. Mother must have bought it, somebody bought it, but it was probably a long time prior to that. I know she didn't go out and buy black ribbon Wednesday night or whenever it was, just for the arm bands.

Thursday morning my sister Mary Beth wore a ribbon, but I didn't, and Mary Beth got sent home from school.

Also at home in December of 1965 I had a younger sister, Hope, and my younger brother, Paul. Paul is 8 and

wore a black arm band to school Thursday morning. He is in second grade. Hope is 11 and in the 5th grade and I believe she wore an arm band on Thursday morning, too.

I suppose my mother and father have participated in most of the demonstrations against the war in Viet Nam and Civil Rights demonstrations that I have participated in.

The meeting Thursday December 16 was attended by people who had worn the arm bands on Thursday and other interested people. My sister was there, Chris Eckhardt, Chris Singer, Ross Peterson, and Bruce Clark, and others whose names I do not know. Bruce didn't wear an arm band but I am sure that Chris had worn his, and I knew on Thursday evening that he had been sent home. At the meeting we called Mr. Niffenegger and tried to talk to him. It was either Ross or Bruce one of the two who called, because they were the oldest of the group. I can't remember exactly what was said. The purpose for calling Mr. Niffenegger was that we were going to ask him if we could maybe have a discussion with him and talk to him before the school board meeting. We thought if it was brought to the school board's attention, what had happened, I really thought that they would change their decision. We recommended a meeting ahead of the regular meeting and he said no that he would not call a special meeting. He said the regular meeting would be in the next week, Tuesday, but we went on Christmas vacation Wednesday and that would have meant 3 days that we then would have been either out of school or unable to wear the arm bands.

I didn't anticipate the rule would forbid me from wearing the arm bands outside of school. I was concerned about being able to wear it to school because I didn't see anything wrong with it. I didn't think it was all that bad.

In fact, I thought it was kind of good. That's why I was going to wear it. I wanted to wear it as many days in school as I could.

"Q. And so in spite of the fact that you knew that the rule was in effect, you wore it Friday morning." "A. Let me try to explain it. I did not wear it Thursday morning because I—we were still trying to get ahold of Mr. Niffenegger and we were trying to discuss it with him, and he said he wouldn't. Now, I don't know if I can do this or not, but I read the paper Friday morning, and—I don't know—could have been hearsay, but it stated—well it said that Mr. Niffenegger said that there would—there was something to the effect that there wouldn't be any meeting and I believe the word 'trivial' was mentioned in it. I'm not sure about that, but somewhere along the line he gave that indication, I know that. And I thought that—you know—he could at least listen to us and hear what we were going to try to say. And when it came out that he wouldn't even listen to us—I don't know—I guess I decided to wear it."

Thursday night meeting was at the Eckhardts'. I don't know how I found out about the meeting. I assume Chris Eckhardt's parents were at the meeting but they didn't participate in it. The Eckhardts live 7½ miles from where I live. I assume my father or mother took me there.

When I wore the arm band to school my friends made complimentary remarks and those who weren't my friends made uncomplimentary remarks. I suppose I was attracting some attention by wearing the arm band. I wanted students and everybody else that saw it to know I was wearing it, and I welcomed questions at school while I was wearing it.

My parents and I are generally against the policy of the government in Viet Nam. By wearing the arm band I

suppose I would have hoped to have influenced public opinion about the matter of Viet Nam and to call attention to it; to influence people to believe as I did about it.

On that day, as I ate lunch, the students made uncomplimentary remarks to me. Some referred to me as a "commie" and other things of that nature. Then this one boy quieted everything down and told everybody to lay off me. After lunch I went immediately to English class after I went to my locker to get my books. The teacher was Mr. Lory. I came into the room and he told me to go down to the administrative offices and when I got to the office there was a phone there and I asked the lady in the office if I could use the phone, and I did. Eventually I started talking with Mr. Wetter and in the course of the conversation Mr. Wetter put in a call to my parents. And I would assume that at about the time he was calling my father came in.

Re-Direct Examination by Mr. Johnston.

I do not consider this a trivial matter, it is important to me because I morally think it is wrong, and when people are getting killed. I guess that's important to me.

I spend from 8:00 o'clock till 3:30 p.m. 5 days a week in school about 6½ hours a day. Most of the people I associate with are my school friends.

These views were not imposed upon me by my parents or the Eckhardts; it was my own view. I like to think that I thought it out myself. At first my father opposed my wearing the arm band, but my mother didn't. I can't remember the exact reasons why my father opposed it, but I suppose it was because he felt that it would be defying the Board, and he didn't think I ought to do that.

Students regularly talk to each other at the lunch room and the student center. They have arguments there on

other occasions, and on this occasion no faculty member had to intervene.

Re-Direct Re-Cross-Examination by Mr. Lovrein.

I know there was somebody from the office in the lunchroom. I believe it was a clerk or someone; there was an adult. I couldn't say for sure whether he was within hearing or aware of anything that was being said or exchanged between me and other students.

MARY ELIZABETH TINKER, plaintiff called as a witness testified under oath as follows:

Direct Examination by Mr. Johnston.

I am Mary Elizabeth Tinker, 704 Grandview. I am also known as Mary Beth Tinker. I am 13 years old. My parents are Leonard Edward Tinker and Mary Jean Tinker. John Tinker, who testified earlier is my brother.

I go to school at Warren Harding Junior High School. I have gone to school in Des Moines since kindergarten.

I decided to participate in a "witness" or "demonstration" by wearing a black arm band, beginning Thursday December 16 until New Years, fasting one day and Christmas Eve; and attending New Years Eve service at the Unitarian Church. The purpose was to mourn the dead in Viet Nam and to urge for a Christmas truce which hopefully would be open ended; to last and keep going on until there would be a settlement to end the war. I was hoping President Johnson would have a settlement with North Viet Nam and a truce. On Wednesday, December 15, Bruce Clark and Ross Peterson came to my house and they were talking to mom and dad and John and I about it. I decided to wear an arm band Thursday morning to school, December 16. This decision was my own, neither mother nor father attempted to convince me or said anything to me that I should wear one.

This is not the first time that I have ever engaged in a witness or demonstration of my ideas about peace and war. There have been demonstrations off and on about protesting the Viet Nam War and also about Civil Rights that I have been in; by Civil Rights I mean racial affairs.

I attend Des Moines Valley Friends meetings and these subjects are discussed there and I participate in the discussions. I started thinking seriously about political implications of war and peace when I was in about the 4th, 5th or 6th grade. These subjects are discussed at home and I participate in discussions about them with my brother and older sister and my parents, mostly.

I wore a black arm band Thursday December 16. I used some ribbon that we had around home. I got it myself and cut it. I wore the arm band when I went to school arriving about 8:00 o'clock a.m.

We had chorus and I remember going there and I am pretty sure that I had the arm band on when I went to chorus. It was just a strip of black cloth about 1 inch wide and it was pinned on my left arm with a safety pin. No one at chorus when I first arrived discussed the arm band nor was there any discussion during the first period. Then I went to home room and I do not remember anyone making any mention of it on the way to home room. In home room I sit right by the teacher's desk and she made no mention of the arm band. Nor did she make any sign that she saw the arm band. Nor did any other students show that they recognized it or mention it.

Then I went to science class taught by a Mr. Vigharoli, I don't think anyone mentioned the arm band to me on the way to that class. Nor did the teacher. The girl I sit next to in science asked me about it and I told her what I was wearing it for. That was about all the discussion

of it in that class. She also signed a petition that I had and I think maybe one other girl talked to me about it and signed it. The petition said that we should have the right to wear any arm band or crucifixes or anything like that. I had the petition signed before science class began.

After science I went to homemaking class. No one talked to me about the arm band on the way to class. Mrs. Bell, teacher of homemaking class, pointed to the arm band and that was about all she did. The students noticed it, I could see them looking at it and I think a couple of kids that sat at my table asked about it. Everyone talks in homemaking class while we are sewing. The girls at my table told me I had better take it off or I would get in a lot of trouble. They were not threatening me, they were just trying to keep me out of trouble. They were my friends and I told them I was going to go ahead and wear it.

Then I went to history class and there was no discussion about the arm band on the way to that class. If Mrs. Dickinson, the professor of the history class, noticed, she didn't say anything. The boy that sits behind me told me that I had better not wear it because I would get into trouble. Then I went to English class, the teacher is Mrs. Corey. The students told me that I had better take the arm band off while I was in the hall on the way to class. There was no disruption caused by this. My English teacher made no mention of the arm band nor did any of the others in English class, which was right before lunch.

I wore the arm band to lunch in the cafeteria and a couple of girls sitting at my table told me I had better take it off or some of the teachers would start getting me in trouble. A table of boys that sat behind us made some smart remarks. They were just teasing. They always do that to us, about anything. It is common for students to talk between tables at the cafeteria.

After lunch I went back to the second half of English with Mrs. Corey, and I don't think there was any discussion or activity about the arm band.

Next I went to math class, taught by Mr. Moberly. The day before, in this class, we had spent the whole day talking about student protests. Mr. Moberly said that he didn't like student protests because the students didn't have anything better to offer and he said that if anyone demonstrated in his class they would get kicked out. I asked him if wearing a black arm band would be considered a demonstration by him and he said yes. On Thursday I wore the black arm band to Mr. Moberly's class, I walked in and sat down in the back of the room. He stands in the back by the door until the bell rings. As he walked by my desk after the bell rang, he laid a pass to go to the office on my desk. I picked up my books and went to Mrs. Tarmann's office. She wasn't in so, I sat down and I waited for her about 10 minutes before Mr. Wiladsen, the boy's advisor in and asked me why I was in the office. I told him I wasn't sure but I thought it was because I was wearing a black arm band. He told me that all that was left to do was to take it off, and so I took it off, and then he gave me a pass to go back to math.

I went back to math and I had been there about 5 or 10 minutes and Mrs. Tarmann came in and she told Mr. Moberly that Mary Beth Tinker was wanted at the office. At this time I did not have the black arm band on because Mr. Wiladsen had it. I went to the office and saw Mrs. Tarmann. She told me she was sorry she had to do it, because she understood my point of view because her grandparents had been Quakers or something like that, and then she told me she would have to suspend me. She said that she had to follow orders, but she sympathized with my opinion. She gave me a suspension notice that

says you have been suspended and it goes home to your parents and they have to sign it and bring it back before you can get back in school.

I had never been suspended before.

I still hold the same views about Viet Nam.

I returned to school the day after Christmas vacation, January 3th. There was one day of school after vacation before I returned. I did not wear an arm band when I went back to school. If school began tomorrow, I would still want to have the right to wear an arm band for the same reasons that I wore it before.

Cross-Examination by Mr. Lovrein.

Before the meeting Wednesday I think mom and dad had been talking about some college students wearing black arm bands at home. On the same day I wore an arm band my brother Paul and sister Hope did also. Hope was 11 and in 5th grade, Paul was 8 and in Second grade. My parents did not explain to them the reason for wearing the black arm bands; they understood perfectly well. I don't remember who put the arm band on the little ones. Whoever they asked to. The ribbon was just around.

I remember testifying on a deposition a week or two ago and I recall that I said that mother went to the store and bought the ribbon after we decided that we wanted to wear a black arm band. But as I remember now, I don't think she bought it. I think we already had it.

When I wore the arm band to school, I wore it over a black sweater.

The principal's decision, to have a ban on arm bands prompted the discussion in math class on Wednesday. It was a general discussion among the pupils and Mr. Moberly.

Not many students talked. I asked Mr. Moberly a few questions. I asked him if he considered wearing a black arm band a demonstration and he said yes.

The next day I wore an arm band.

I was 13 years old last December. My birthdate is September 8th. I was in the 8th grade then and will be in the 9th grade this fall.

Re-Direct Examination by Mr. Johnston.

I did not wear the black sweater to try to make the arm band invisible, and it was possible to see the arm band over the sweater. The whole period of mathematics on Wednesday, December 15th was taken up by this discussion of students and demonstrations. I think it was started by Mr. Moberly. He did not attempt to stop it in any way or to change the subject to mathematics. He participated actively in this discussion; he did most of the talking. I was the only student who disagreed with positions that he took. I diasgreed both by making statements and by asking questions. Mr. Moberly talked about student protests and said that they just protested to be doing something. I don't think that he specified any particular protests.

CHRISTOPHER PAUL ECKHARDT, plaintiff testified under oath as follows:

Direct Examination by Mr. Johnston.

I am Christopher Paul Eckhardt, 3819 Lanewood Drive, 16 years old. My parents are Margaret and William Eckhardt. My father is a clinical psychologist and an assistant professor of psychology at the college of osteopathic medicine and surgery Des Moines, Iowa. I attend school at Theodore Roosevelt High School in Des Moines. I have

attended school in the Des Moines Independent School District since 5th grade and I will be a junior, 11th grade this fall. My grade point average is a B+ and I intend to attend college when I graduate.

About Saturday night December 11, 1965, my parents told me that some college students and interested people were going to be wearing black arm bands on December 16 until January 1, and fast on December 16 and January 1st, to mourn the dead in Viet Nam and to hope for a Christmas truce. My parents learned of this at a meeting at our house Saturday afternoon which I did not attend. It sounded to me like a nice thing to do, but I did not decide right away that I would participate.

I attend the First Unitarian Church in Des Moines. The youth group there is called Liberal Religious Youth and I attend that. Questions such as international policies and conduct of war in Viet Nam are discussed there. I have had views on peace and war since about the 8th grade and these matters are now and then discussed in our home. My parents have never attempted to dissuade me from my views. Before this demonstration I marched from Ames to Des Moines about 3 years ago in a Civil Rights demonstration. I also went to Washington, D. C. in November for an end the war in Viet Nam demonstration. Dr. Spock was involved in that demonstration. On Wednesday night I announced to my parents that I was going to wear an arm band. They had not tried to persuade me to wear one and did not attempt to dissuade me from wearing one. I first wore it Thursday, December 16, and I attended Roosevelt High School, with it on.

I arrived at the school around 8:00 o'clock and went to my locker. At this time I had an overcoat over the arm band and it would not have been visible. The arm band first became visible when I took my overcoat off at my

locker. No one made any comments about it. From my locker I started directly for the office. A student asked me why I was wearing it and asked me if I knew there was a rule against it, and I told him why I was wearing it, and I told him I knew there was a rule against it.

The Wednesday morning paper contained an article saying that the principals had met together and had decided that it would cause a disturbing influence in the schools to wear arm bands and they had prohibited it. I thought they might suspend me and that is why I went directly to the office. Bruce Clark was with me. He did not have an arm band on but wore a black suit. I asked to see Dr. Rowley, principal at Roosevelt but he was in a meeting. Mr. Blackman, vice principal, came out of his office and saw the arm band and asked me to come into his office. I waited 45 minutes in his waiting room and then he asked me into his office. By this time Bruce Clark had gone to class. Mr. Blackman took me into his office and asked me who the instructor was that asked me to take the arm band off. I told him no instructor had asked me to take the arm band off and so he asked me to take it off and I told him that I wasn't going to. I think he said he was going to have to suspend me because the principals had decided that it was against the rules to wear one.

The arm band was about 1¼ inches in width and about 8 or 9 inches long, and black on both sides. I wore it over a cocoa brown coat.

Q. In response to Mr. Blackman's statement did you remove your arm band? A. No.

Q. Did he suspend you? A. Well, we talked a while and then—

Q. What did you talk about? A. He called my mother and he told her that he was going to have to suspend me,

and he asked me to remove my arm band a couple more times because it was going to bring bad publicity to the school, and we talked a little while longer—I can't remember exactly what about—and then Mrs. Cross came in.

Q. Who is Mrs. Cross? A. Mrs. Cross is the girls' adviser.

Q. At Roosevelt High School? A. Yes.

Q. What if anything did Mrs. Cross say when she came in? A. She must have been walking by, and Mr. Blackman asked her to come in and she came in and shut the door and he told her, "We have a student here who has a black arm band, who doesn't want to remove it," and so she sat down beside me and started talking to me. She was saying this is going to look bad on my record.

Q. On whose record? A. On my record. Earlier, Mr. Blackman had told me that I had a good record with the school, and asked me if I was looking for a busted nose, and I told him I wasn't, and he said something to the effect that that is what it was going to look like on my record for being suspended from school, and Mrs. Cross informed me that the colleges didn't accept demonstrators or protestors, and they told me this and asked me to remove my arm band and I told them I was going to keep it on, and Mr. Blackman gave me a pass to go home and told me that a suspension notice would come in the paper.

Q. Come in the mail? A. Come in the mail—I'm sorry. And that it would let me know that I was going to get all fives for the classes that I missed.

Q. What's a five? A. Five is an F. Same as failing. And I believe I asked them if I took my arm band off, if I could come back tomorrow, and they said something to

the effect that a notice will come in the mail, and don't do anything until the notice comes. And so, I went out into the main office and Mrs. Cross asked me if I wanted to go in the other room and call my mother to talk this over with her and take my arm band off, but I told her I had informed my parents that I was going to wear an arm band, and so I saw Dr. Rowley, and he asked me what Mr. Blackman had done and I told him Mr. Blackman had suspended me, and then I signed out and walked home.

Q. Chris, during the time that you were in Mr. Blackman's office was there any discussion of the reason that you were wearing the arm band? A. I believe they may have asked me. I can't remember exactly if they did or not, but I think they asked me why I was wearing it, and I believe I answered them.

Q. Did either Mrs. Cross or vice-principal Blackman make any comment on what they thought of your views? A. I can't remember, but they said something like I could wear the arm band after school if I wanted, or before school.

Q. Well, now, did they make any reference to your age in relation to your views? A. I can't remember. I think he did ask me how old I was, and I told him. But I can't remember exactly what happened then.

Q. Did either of them say that they thought you were too young to have any views?

MR. HERRICK: We object to that as leading.

MR. LOVRIEN: We object to that as leading and suggestive.

THE COURT: It is leading.

Q. (By Mr. Johnston) Did they make any other comments about your views, whether or not you should have

them? A. Well, Mrs. Cross had mentioned that she thought I was too young and immature to have too many views, and thought I ought to take the arm band off, and they let me know while I was going to be out of school that I could probably have plenty of time to look for a new school to go to and I told them I liked Roosevelt and I wanted to come back, and they said that if I did anything like this again that I wouldn't come back to Roosevelt.

Q. Was there any more talk about how your wearing the arm band would affect the school's publicity? A. Well, only that I was going to—I would get—only that it was going to make the school look bad and it was going to be lots of bad publicity for the school.

Q. Now, did they say in what way it would make the school look bad? A. No, I can't remember if they did or not.

Christmas vacation began after school Wednesday December 23rd and I returned to school on January 4th. I believe I missed 6 days of school. My understanding was that I would not be able to return to school so long as I wore an arm band.

I have not changed my mind about the war in Viet Nam. I believe the United States is trying to be too aggressive at the moment and is escalating the war while we should be trying to make peace. I believe the United States talks about peace but keeps escalating the war and I feel that I would like to have the right to wear an arm band in school.

Cross-Examination by Mr. Lovrein.

I recall giving a deposition in this case on July 19th and being asked about the substance of the conversation between myself and Mr. Blackman and Mrs. Cross. Since that time I have recalled more about it.

I did not get all 5's in my classes. I came back to Roosevelt on January 4th, one day after school started after Christmas vacation. I did not fail any of my subjects and I had around a B+ average at the end of that semester. I was not penalized in any way, grade wise, by reason of the days I was out of school.

On the way down to the principals' office, I met a boy who asked about the ribbon. I don't know who it was.

When I arrived at school with the arm band on, I went right to the Administrative office after going to my locker because I knew I was breaking a rule. I didn't expect exactly to be suspended. I went to the office to tell them I was breaking a rule; that I had the arm band on, and that my intentions were to wear it over Christmas vacation. I didn't know exactly what they would do.

During the meeting at my parents' home on December 11th, I was out shoveling snow and inside for a little while but not very long. My parents were in attendance and I think there were 15 or so others there. I don't know who sponsored the meeting. At the time my mother held some office in the Women's International League for Peace and Freedom. To my knowledge this organization did not sponsor the meeting. My mother and father were there, and I'm not sure, but I think Bruce Clark and Ross Peterson both students at Roosevelt High were there.

The purpose of the trip to Washington in November, 1965, was for an End the Viet Nam War march. It was a march from the White House to the Washington monument. My mother went. We were there for a weekend. We carried banner, placards, and so forth protesting the war in Viet Nam. Those were my sentiments then and they are my sentiments now. I wore a black arm band to school as a matter of protest of the war in Viet Nam, and to hope for a Christmas truce. That was the sole reason. I hoped in

a small way to influence public opinion toward my views of the war in Viet Nam. I don't know who called the meeting in Washington that I went to. I knew that a bus load of people were going from Grinnell College and I decided that I would like to go.

On Sunday, December 12th, 1965, there was a liberal religious youth meeting at our house. I am sure Bruce Clark attended and I think Ross Peterson and John Tinker attended. There was a discussion about the arm bands and a meeting that had taken place the day before. I think just Bruce was there Sunday evening and had also been at the Saturday night meeting. We decided that each of us as individuals would do as she or he wished. But the group wasn't going to sponsor it.

I have seen Defendant's Exhibit One. Something to the effect of this was read at the Unitarian Church on Sunday, December 11 or 12th, and the students took part of it and added more at the liberal religious youth meeting. I think it was either Bruce or Ross who made the additions. I think the mimeograph copies of this were run off Monday or Tuesday at the home of Marjorie Smith. I had a couple of copies of the text of the statement expresses my purpose in wearing the arm band.

I think it was Wednesday night that I told my parents I was going to wear the arm band. I can't remember exactly when I walked from Ames to Des Moines but I think it was around 2½ years ago, before I was in High School. I think there was also a demonstration at the Hotel Ft. Des Moines about two years, or a year and a half ago. It was about Civil Rights. My parents have participated in some of the other marches. Neither of them walked from Ames to Des Moines. The placard I carried in the Washington march said something to the effect of "Follow the Geneva Accords of 1954". There were people there with

the placards. A man would stand on the corner and he would have around 50 with him and you could just take one if you liked one.

The afternoon of the day that I was dismissed from school there was a meeting at my house. Chris Singer and Ross Peterson, were there and I think John and Mary Beth Tinker might have been there. There were some other students; I can't remember exactly who. Bruce Clark was suspended for wearing an arm band on Friday.

I think either Ross Peterson or Bruce Clark called Mr. Niffenegger from my home. I believe there were two different calls made. I think they wanted to see if a special board meeting could be held because they wanted to talk with the school board because they didn't want to defy authority and they didn't want to break any rules. We would have rather have talked it over with them. But no special board meeting was being called. He told them that next Tuesday night was going to be the Board meeting and this might be on the agenda and might not.

That night there was a meeting at the Friend's House, the American Friends Service Committee. I think our parents called the meeting. They were there. John and Mary Beth Tinker were also there. Mr. Sawyer, law professor at Drake University, Chris Singer and Mrs. Hutchinson were there and Dr. Griffin and some more students from Roosevelt. Phil Keo and Bruce and Ross were there. Sandy Jones was there. Altogether around 20 were there. Chris Singer, a girl student at Roosevelt was suspended for wearing an arm band. I think they just wanted to get together to see what could be done and we had Mr. Sawyer there as a legal advisor. The other students, 3 of them, I think, decided to wear arm bands because the school board wasn't going to hold a special meeting. Those 3 were Chris Singer, Bruce Clark and John Tinker.

Re-Direct Examination by Mr. Johnston.

Just before I went for the deposition I had been on vacation. At the time these events were taking place I kept a scrap book of them. Since the deposition I have had a chance to refresh my memory by referring to my scrap book and I have an independent recollection of the events that I testified to today, refreshed by reference to my scrap book.

At the school board meeting Tuesday before Christmas vacation the Board decided to defer a decision whether or not to uphold the ban. The next school board meeting was Monday night at the end of the first day after Christmas vacation. I decided not to go back to school the first day after vacation, but rather to wait and see what decisions were made at this meeting Monday night.

Testimony of LEO E. WILLADSEN: Defendants-appellees amend the record by including in narrative form the testimony of Leo E. Willadsen, called as a witness by the plaintiffs.

Direct Examination by Mr. Johnston

My name is Leo E. Willadsen, 2520 Arthur Circle, Des Moines, Iowa. I am employed as vice-principal of Warren Harding Junior High School. I have been vice-principal nearly a year. The principal is Mr. Chester A. Pratt. I recall having an encounter with a student known to me as Mary Elizabeth Tinker in my official capacity as vice-principal on or about December 16, 1965. When I walked into the office she was seated there and I asked her why she was there and she indicated that apparently it was because she was wearing the black arm band. She indicated she had been sent to the office. I merely asked

her if she would give me her black arm band that she was wearing, she said "I suppose if you want it", and at that time she gave it to me. I told her that she could not at this point return to her class until such time as the girls' adviser would be available to talk with her. I did not talk with her any longer during that period. Later that afternoon it came to my attention that Mary Elizabeth Tinker had been suspended from school. It was in a casual sort of way. I knew that she had been sent home. There was nothing formal about it as far as I was concerned—but I did find out—did hear in a roundabout way—I don't know exactly how, that she had been sent to her home. In my capacity of vice-principal of Warren Harding these matters generally are under my supervision. I was acting in my capacity as vice-principal of Warren Harding in the acts that I engaged in.

Defendants-appellees further amend the record by including in narrative form the testimony of VERA ANN TARMANN.

Direct Examination by Mr. Johnston

My name is Vera Ann Tarmann. I live at 1017 Sixty-Fifth. I am employed by the Des Moines Independent School District in the capacity of girls' adviser at Warren Harding Junior High School. I have been girls' adviser at Warren Harding for two years. In my capacity as girls' adviser I did have occasion to meet Mary Elizabeth Tinker, a student there on or about December 16, 1965. When I was at lunch I had been informed that Mary Beth had been sent to the office to see me and that she had been returned to class. After I had completed lunch I went by Mary Beth's class and asked her that she come with me to the office. I am not sure but I think I had been told why she had been sent to the office the first

time. When I went to Mary Elizabeth's class to find her I did not notice anything unusual about her clothing. I asked Mary Beth to come to the office with me. She did that, we walked together. I had a conversation with her. It related mostly as to why she had been sent to the office, and she told me and at that time the arm band had been given to me by Mr. Willadsen. The arm band is in my right hand upper drawer in my office. I will not use the word "suspension", Mary Elizabeth was not what we would call actually suspended. In other words she was not referred to the Pupil Personnel Department. She was sent home that afternoon and I called her mother to tell her that she would be sent home until I had an opportunity to talk to her parents. I did have an opportunity to talk to them on Friday morning at my office. It was the following day after she was suspended. Mary Elizabeth did not to my knowledge return to school. I am not sure why. She could return to school any time she wanted to. She could not have returned to school and worn the arm band with my consent. If she had done so I would have asked her to do the same thing, remove the arm band or go home. We make a paper, make the form in duplicate, I guess there are five or six copies, and a copy was sent probably to the Department of Pupil Personnel. I have not done this thing before to other students for this reason, for other reasons, yes, for disciplinary reasons. Except for the fact that this was prompted by Mary Beth wearing an arm band my action was the same as it has been in other instances as girls' adviser. I was acting in my capacity as girls' adviser of Warren Harding. I knew of a regulation prohibiting Mary Beth from wearing an arm band. We knew it was an acting policy at this time. It came to my attention through the secondary principal. The policy was effected at a meeting earlier in the week. Prior to Mary Beth wearing the black arm band, I did not

know of any other student wearing a black arm band. I haven't been aware of any other political or religious symbols at Warren Harding. I am not sure whether there is any regulation against them. I don't know of any. I didn't ask Mary Beth whether she was going to put the arm band back on that day before I sent her home. At the time I sent her home she did not have the arm band on. She could not at that time have returned to her class without wearing the arm band because I wanted to talk to her parents. This was a discretionary action on my part, acting in my duty and authority as girls' adviser. I have discussed these matters with Mr. Pratt and Mr. Willadsen since that time informally, and I hope they have acquiesced in what I have done. There has been no criticism or revocation of my acts by them.

DONALD M. WETTER, Defendant, called as an adverse witness pursuant to Rule 43 testified as follows:

I am Donald M. Wetter, 6004 College Avenue, Principal of North High School. On Friday, December 17, 1965, I recall an encounter between myself and John Tinker, pupil at North High School, because the teachers had been advised by myself to refer to the office any student who appeared wearing a black arm band. This had been adopted as an acting policy by the counsel of principals and the Director of Secondary Education at a meeting of them the day previously. At the time the policy was enacted, no student had worn an arm band at North High School.

Cross-Examination by Mr. Herrick.

When John came to my office he was wearing a black arm band which was plainly visible to me. I asked him

if he was familiar with the policy and he said that he was. I advised him that since he was aware of this policy he knew that I had the obligation of asking him either to remove the arm band and return to classes or that it was my duty to call his parents and ask one of them to come and pick him up at my office, and he would not be permitted to return to classes until he removed the arm band or the policy was changed. I further advised him that this policy had been made with my knowledge and concurrence.

He told me that his purpose in wearing the arm band was to protest the activity in Viet Nam; particularly the deaths, and to attempt to influence a truce. He said he would not remove the arm band. When I attempted to call John's home I was told by my secretary that his father was in the outer office. I explained to John's father that a policy had been adopted that arm bands could not be worn but that John would not be formally suspended; that he could return to school whenever he saw fit to remove the arm band. I told him that he would not suffer any consequences so far as grades because of this particular activity and that I would do everything within my power as the principal of North High School to protect his rights, including his personal welfare.

Before John's father arrived I reminded John that we had a short time previously had a school program in observance of Veterans Day, at which time I personally had appeared before the student body expressing my concern with respect to the war dead. I also advised that I personally felt that there were appropriate times for us to mourn our war dead, including this event and Memorial Day, and it did not seem appropriate or necessary to me to mourn them as he was doing at this time. I told him that I was a veteran of World War II and the Korean War.

DONALD BLACKMAN, Defendant, testified as follows:

Direct Examination by Mr. Johnston

My name is Don Blackman, 5915 Waterbury Circle, Des Moines, Iowa. I am employed as vice-principal at Roosevelt High School, and have been so employed for two years in that capacity. I recall having cause to come in contact with a student at Roosevelt--Christopher Eckhardt--on December 16th, 1965. When I came into the office that morning, Chris was sitting at the table along with Bruce Clark. Bruce Clark was standing I believe, and three or four other boys were around there in the room. It is a small reception room The only thing unusual about Chris's clothing was that he had the arm band. It was just a black arm band, I don't know how wide it was. Later on after we had a little conference I sent him home. I suspended him. Actually, it is an official suspension where the student is sent home and we ask that the student not return until he comes back with his parents. I sent notice of this suspension to the Department of Pupil Adjustment. We make three or four copies and a copy is sent to the Department of Pupil Adjustment through the Superintendent of Schools, and it would be available to the President of the Board. He was suspended because of the breaking of the rule that we had about wearing of arm bands to school. The rule said that we asked the students not to wear black arm bands to school. That was a rule stated as acting policy that was established by the principals at a meeting earlier that week. It was the acting policy of the Des Moines Independent School District, and all these actions which I have testified to were done in my official capacity as assistant principal.

Cross-Examination by Mr. Lovrein.

I asked Christopher Eckhardt to remove the arm band and then I asked him why he was wearing it. He said the same reasons as stated by Mr. Wetter and by Chris, in protesting the Viet Nam war dead. I told him I wasn't concerned with what he believed in; that I was concerned with the fact that he was asked or had been notified that they were not to wear arm bands in school and for that reason he was suspended. I told him that we could just not permit demonstrations concerning beliefs of various natures in school. Mrs. Cross, our girls advisor, came in during the time I was talking to Chris. Mrs. Cross attempted to reason with him and it was mentioned about the young man and his future as far as a record was concerned. The only mention about being accepted in college was that colleges are asking about each one of our students as far as their records are concerned. The suspension would show on the record. I called Mrs. Eckhardt, and we didn't agree as to the situation but I felt in discussing it she realized that Chris would be sent home. She said that Chris was acting as an act of conscience, of his own volition; that he wasn't forced to wear the arm band, and that he had the constitutional right to wear the arm band if he so desired.

Re-Direct Examination by Mr. Johnston.

I suppose I recall students wearing religious symbols such as crosses and things of that sort to Roosevelt from time to time. I suppose there would be political buttons involving campaigns for president and vice president, I never really noticed, frankly. There is no regulation against this sort of political demonstration.

E. RAYMOND PETERSON, Defendant, called as a witness by the Plaintiffs testified as follows:

Direct Examination by Mr. Johnston.

I am E. Raymond Peterson, 5612 Harwood Drive, Des Moines, Director of Secondary Education in the Des Moines Independent School District.

I called a meeting at the direction of the superintendent of schools and assistant superintendent of schools to be attended by the principals of the Des Moines Independent School District on Tuesday morning December 14th, 1965. It was at this meeting that the policy prohibiting the wearing of arm bands was made. The policy was that the students, "if they attended school, demonstration type approach, that the students would be asked, when recognized that this was true, by the teacher or whenever it was first noticed, and that the student was to be asked to remove the black arm band." If the student refused, then the student would be sent to the particular building in which the student was then housed and would be asked by the administrative personnel in the building to remove the black arm band. If the student still refused to do so, then the parents would be contacted if possible and the parents informed of the situation and asked if they would like to ask their student—their child—or boy or girl to remove the black arm band. They had that privilege of so doing. If there still was refusal then the student would be sent to the home until such time that the black arm band should be removed or that the Board of Education should reverse the decision as full policy.

"Q. Well, now, have you ever participated before in the promulgation of a policy prohibiting the wearing of a religious or political insignia?" "A. We have no indica-

tion during the time that I have been here of any demonstration which might come about because of this reason."

"Q. So this policy was directed solely at the students from whom you had heard were going to wear black arm bands to support their views on the Viet Nam war?" "A. Not at the students; at the principles of it."

"Q. I don't understand that." "A. We had no particular students in mind whatsoever. No individual students. It was those who might go against the regulation. That could have been any of the 18,000 students."

"Q. But it was the principle involved?" "A. That's what I said, yes, the principle of the situation."

"Q. Over the Viet Nam War?" "A. No, it was the principle of the demonstration."

"Q. Was the regulation as it was promulgated specifically related to the wearing of the black arm bands?" "A. It was at this time, this particular meeting, yes."

"Q. Was there anything said about wearing them as regards to the war in Viet Nam?" "A. The objection to the policy that the United States Government was carrying out as to Viet Nam was the purpose."

Quotations from the newspaper that I said, "For the good of the school system we don't think this should be permitted. The schools are no place for demonstrations. We allow for free discussion of these things in the classes. The policy was based on a general school policy against anything that was a disturbing situation within the school. The school officials believe that the educational program would be disturbed by students wearing arm bands." are correct statements of the policy as I remember it.

Defendant's Exhibit Two is a photocopy of the reprint of the article which correctly states the policy.

Defendant's Exhibit Three is a policy that was promulgated, considered and adopted by the school board about the time arm band situation arose.

Defendant's Exhibit Four is a report that I made to Dr. Davis.

It's understood among the principals that anything which interrupts the general educational procedure of the school may be excluded by the principal in the building itself. Now, as long as it is part of the curriculum and promotion, this is a different situation.

ORA NIFFENEGGER, Defendant, called as a witness for plaintiffs testified as follows:

Direct Examination by Mr. Johnston

I am a professional man. I am an attorney. At the present time I serve in the capacity of Director (should be President) of the Board of Directors of the Des Moines Independent School District. I was selected by the free and popular election of my fellow board members. I was elected as a member of the Board by the people of the Independent School District of Des Moines. The other members of the Board who serve with me are Mrs. Rolland Grefe, Mr. Arthur Davis, Dr. Caudill, Reverend Keck and John Haydon. I am the same Ora Niffenegger who is named as a defendant in this lawsuit and the other folks that I have named as Board Members are named as defendants in this action. The matter of suspension of students for wearing black arm bands in the Des Moines School District came to my attention in my capacity as President on Thursday, December 16th, 1965. The Board did not have occasion to act upon that policy at that time, but did at a later date. The first time we acted upon it

would have been the Tuesday following Friday, December 17th. At that time we did not reach a decision. We delayed the matter in order that we could get advice from our legal counsel and to make further investigation. We did get that advice and did make further investigation. We had occasion to meet again to act upon this matter at a regular meeting which would have been the first Monday evening in January. I don't have the record, but if my memory serves me, all members were present. In our January meeting, we, by a majority vote of the Board, voted to uphold the administrative policy that had been settled upon by our hired school officials and that policy was the prohibition against the wearing of arm bands in our school system. In taking that action, the Board was acting in its official capacity and under the statutes of the Code of Iowa, granting it authority to act as members of the School Board System.

Cross-Examination by Mr. Herrick.

On Thursday, December 16, I received four telephone calls within about half an hour. The first two were from Ross Peterson and then from Bruce Clark. Two women whose names I do not know for sure also called. The young men explained to me that they had been denied a constitutional right to wear arm bands and they wanted me to call an emergency meeting of the school board. You have a course of action to your school officials. They told me they had exhausted this means, and had turned to the last resort which was for me to call a meeting. I told them that formalities and custom and common courtesy had made it impossible to call a special meeting.

"I, also, when they told me the purpose of the meeting—they had explained to me—which was the opposition to the United States policy in Viet Nam, I explained to them the best that I could that I thought they were taking the wrong way out, that we had in this country of ours a well-defined way in which to handle this matter and that was that if they didn't like the way our elected officials were handling things, it should be handled with the ballot box and not in the halls of our public schools. Nothing was said to me at that time about a Christmas truce or the mourning of the dead."

These people appeared at the regular meeting in January, represented by Professor Craig Sawyer of the Drake Law School at that time. Anyone could speak at the regular board meeting. If they would give me their names ahead of time we would have it on the printed agenda if there was time for it. That actually at this time there wasn't time to get it on the agenda but they were free to be present and represented. Our board room was filled to overflowing. There were a few signs present and on several occasions it was a little bit touch-and-go as far as maintaining order, but we did get through. In other words, there was some demonstration from people locally and apparently from outside the city.

RICHARD K. MOBERLY, called as a witness for the Defendants testified as follows:

Direct Examination by Mr. Herrick.

I am Dick K. Moberly, a math teacher at Warren Harding Junior High.

I recall in the middle of December when this matter of arm bands came up, having a discussion in my class that

was not on the arm bands entirely. It started from the report that was in the paper regarding the policy on arm bands.

This class is an exceptional group of students in an advanced track. They are very vocal and have good minds. They ask a lot of questions and sometimes questions other than mathematics, but I feel I should try to answer them as they come up. This was one of the things that happened during the school year. There was a question on why the policy was as it was put in the paper. We spent five or ten minutes on this particular point but it dragged on to the different demonstrations that were going on in the country at the time, and we could have spent as long as thirty minutes on it. I do believe it kind of wrecked the class, but I believe that we did get through it and end it and had a little time at the end for study and getting ready for tomorrow. I ended up by saying if there was going to be a demonstration in my class, it would be for or against something in mathematics and if they wanted to demonstrate in my school, they better be demonstrating about something that was in my class. I had a rule in my own mind, if they were going to talk about somebody, they should be there, and what we have in class is what we have in class, and should not be outside of class.

Cross-Examination by Mr. Johnston.

I have taught at Warren Harding two years. Mary Beth Tinker is a member of the advanced track class of mathematics that I teach. In the discussion in the class I expressed my views on demonstrations that were against things and not for things. Mary Beth Tinker has never worn anything that disrupted my class that I know of.

The wearing of political buttons for campaigns in my classroom has been held to a minimum. I think we have

had to run kids to the office when they were wearing a stream full of them down their front, and I think we have asked them to make it presentable at different times. One button with a picture of Senator Goldwater on it would not be objectionable in my view and I hope a button with President Johnson on it would not disrupt the class. I do not know if wearing a political button with a picture of President Johnson would be a violation of the policy. I am familiar with a symbol called the Iron Cross that was used by or that commonly became associated with the government of the Third Reich when it was the power in Germany because I was there. I have seen that symbol worn in my class and I have ridiculed people involved in wearing it; that they were degrading the country's mental spirit. I have told these students so, but I have never kicked them out of class over it. That's not included in the policy involving the arm bands so far as I know. These symbols have never caused any disruption in my class. I have seen these iron crosses worn since the suspension of Mary Beth Tinker for wearing arm bands.

Portion of deposition of LEONARD TINKER, which was admitted in evidence as Exhibit 8.

Direct Examination by Mr. Herrick

My name is Leonard Edward Tinker, Jr. I am forty-seven. I am a staff member for the Regional Office of the American Friends Service Committee. I have been with the Friends four years. Prior to that I was pastor in Methodist Churches in Des Moines and other parts of Iowa. I am an ordained Methodist minister. I was with the Epworth Methodist Church in Des Moines immediately

preceding my present work. I was in the Epworth Methodist Church five years. Prior to that we lived in Atlantic, Iowa. I was pastor of a Methodist church there. I am a member of the Methodist church now. I am a minister under appointment of that denomination. I have no connection with the Friends church. My job is called the Secretary for Peace Education. That's a staff job for the American Friends Service Committee. It is an instrument of Quaker concern but it is not technically part of the Friends, the religious society of Friends. It is a bona fide peace organization and I am under appointment by the Methodist appointive powers to serve in this capacity. I am appointed by the Methodist Bishop. This is a special appointment and I am appointed such as any chaplain would be appointed to a hospital or a college professor would be appointed to teach in a college. I am paid a salary by the American Friends Service Committee. The regional office is at 4211 Grand in Des Moines, and the national office is in Philadelphia, Pennsylvania. I am not in charge of the regional office, I am a staff member there. It is directed by a regional board and an executive secretary. This is a regional office of the national organization of Philadelphia, but all the A. F. S. C. work is carried under the direction of lay committees so every staff person and every program has some committee that is responsible for its work. I know the name of the organization known as the Students for Democratic Society, I am familiar with it generally.

Q. Was that organization the original name of the Black Arm Band. A. So far as I know this is not—is not a program of the Society. What it is, there were S.D.S. people at Eckhardt's home. As I understand it, this was proposed at a meeting which included students, some of

which were related to S.D.S. and some adults at the Eckhardt home, on Saturday, December 11, 1965. I don't know who called the meeting and I don't know that the group had any official standing. Some of the people who were present had previously attended and gone to Washington, and they met with the students afterwards. I was not a part of that meeting. This was not an outgrowth of some prior meeting in Washington, D. C., but people who had been to Washington then assembled at the Eckhardts. The Washington meeting was a march. I don't know the date of it. I don't know the date of that meeting and I did not participate in that event. They did march into the Capitol. People concerned for peace in Viet Nam went back to Washington and some of these same concerned people met at the Eckhardts', students and adults, and I came into the meeting at the very close of the session to get my wife, I guess. I was not at the meeting, I came at the end to get my wife. I am generally aware of what took place because they told me. There was one of the proposals apparently that came out or was suggested was that students and others, I guess they used the word concerned Americans, wear black arm bands to support the truce, supported by Senator Kennedy, and to mourn the deaths in Viet Nam. I will read this from notes that I have taken at that meeting.

The students decided finally on several activities. One, to wear black arm bands as symbols for mourning for all dead in Viet Nam and to urge acceptance of a Christmas Eve truce, preferably hope and end it as suggested by Bob Kennedy. Two, to have a day long fast (a) Thursday, December 16th, (b) December 31st if the war was not ended by then. The band wearing would commence Thursday, December 16th and I think the rest here is not relevant

perhaps. That's the decision I have which was reported to me, was that these were college students and not high school students, as far as I know. According to the report that I have, there was another meeting which was held at the Eckhardts' home on Sunday, December 12th. This was a meeting of high school liberal religious youths. These meetings are held weekly at different parents' homes of high school members of the group, under the auspices of the Unitarian Church. They are associated with them, I don't know what the exact relationship is. This meeting was at the Eckhardts' home by coincidence. They just happened to have two meetings at their home on two successive days and Chris Eckhardt, their son, is a member of this religious group, and the action of the college students and others, the date previous was reported to the whole meeting of the Liberal Religious Youth. I think I should mention one other thing rather relating to this evening meeting at Eckhardts and that is that the group did not take any collective action as far as the students', the college students', proposal of the day before. My notes indicate they decided each member could decide for himself if he wanted to join this college students' plan. I don't know if my children were at either of these meetings. I guess they weren't. Somebody told my children of the plan, but I don't know exactly who it was. I would assume that in talking about the situation at home after such a meeting, we would discuss what went on there, but to my knowledge their interest in participating in it was stimulated by talking to somebody else later, some high school student later, and they can tell you who it was in detail. I do know when I first talked with them about wearing the arm bands this wasn't a program you understand, I mean you are talking about a situation here where somebody goes to a meeting, they come home, and I cer-

tainly don't know whether we discussed the matter or whether we didn't after returning home. I know my children went to school with a black arm band. They knew about the proposal for college students to wear the arm bands. This apparently was told them by one of the high school students that was attending the Liberal Religious Group session and they decided they believed in this and that they would wear the arm bands. We did discuss it in the home before they went. I don't know where they got the arm bands. I suppose they found a piece of black ribbon, I certainly didn't provide them that morning. I knew they were going to wear the arm bands and I knew of their concern at this point.

By that time I knew that the School Board had announced this was not permissible and I raised a very serious objection in the conference with the youngsters and with my wife as to whether or not they ought to do this, and in the ensuing discussion I became convinced that this was very definitely a matter of conscience for them, that they were not lightly defying authority which I take if they should not lightly do, but they had a conviction and that this was a leaning of their conscience and I had to make a choice as to whether or not I would stand by my children in doing so, in saying something that I thought was true, honorable and either had to be with them or not with them, and I felt that in that situation I had to stand with them, and I still do.

Q. Well, if I understand you, you thought regardless of the fact that this violated a school regulation? A. No sir, not regardless of the fact, not regardless of the fact at all, but given the fact of a school regulation and also the fact of their own conscience and also of their assuming values and opinions that I hold certainly, and given the constitutional rights that I think they have given this set

of facts, it seemed to me that I had to support them in what I considered the exercise of their own conscience and of their own constitutional right.

Q. Now you ignored the fact that this was done in the school building. A. I did not ignore the fact at all, sir.

Q. You felt that regardless that it violated a regulation, you know to wear the arm bands, that nobody would bother them? A. I thought the school authorities had to obey the constitution and I still do. It was my position that my children were involved in a matter of their conscience and that they have both a right to conscience and a right to speak, and these rights are very primary rights in my mind so I intend to uphold them.

Q. And you felt that that was regardless of the place where they were to express their conscience or their belief? A. Well, a person's conscience, sir, is not restricted to place. Nor by the way is the constitutional right of free speech as far as I know. I do not feel that you can say anything you want to in the school. I don't think I can say anything I want to anywhere.

Q. You are not inhibited by regulation of the school? A. I am inhibited by all, I'm not an anarchist in the least. I believe in the exercise of authority. I believe authorities ought to be obeyed but not absolutely always. There are times when they must also be questioned and it seemed to me this was one of these times.

I did not go talk to the school authorities prior to the time the arm bands were worn, nor did the authorities talk to me. They knew we wanted to wear arm bands because the students had already gone to them and talked to them about it. The youngsters themselves tried to approach the School Board and they were not successful. I

did not approach the School Board. There were two of my youngsters involved in this situation. I have six children, five of them were in the schools. I had a third one, Paul Tinker, who wore an arm band. Paul was then eight. He attends Cattell School. He came to school with an arm band. Hope did also. Hope was then eleven. She attended school at Madison. They got the arm bands at home. I don't know whether they got them themselves, whether their mother got them for them, I don't know. I wouldn't know whether there was that much black cloth in the house.

As I recall, I did ask John to call in the event he encountered difficulty wearing the arm band. I don't know whether John called before he reported to the principal's office. I don't know the sequence. As I recall I was not there by the time he reached the principal's office. I visited with the adviser. It was the principal, it must be, I saw the principal then. I don't remember that conversation. I assume we talked about the problem. I guess John accompanied me home. As I recall, John called me, either he did or the school did, I think he did and so I went down, but I didn't keep a record of all sorts of detail, I don't think this is germane.

I was present at the meeting of the School Board on Tuesday following that, the 21st. I would not question the newspaper accounts that there were about two hundred students and adults that attended the meeting. Professor Sawyer was not employed, he happened to be at the meeting because he was secured. He agreed to serve as a spokesman for the group. The paper states there was a picket line formed outside the Board Office. I don't question that.

Q. It was made up of this group, Students for Democratic Society? A. The newspaper listed the names. I am not aware of their relationship. If the newspaper listed the names the youngsters must have given them that information.

Q. Well, that's what the paper said, they were members of this group, members of the Democratic Society? A. It may be.

Q. Is that correct? A. I have no relationship to that operation.

Q. You are familiar with the organization, are you not? A. I am familiar with several organizations that I don't operate.

Q. Well, I am at this minute interested in the particular group, Students for Democratic Society. They were critical of the U. S. Policy in Viet Nam. A. All right, press the matter.

Q. And they had been critical of the U. S. Policy in Viet Nam? A. It just happens that there are many people critical of the policy in Viet Nam.

Q. May I ask you to answer my question? A. Go ahead.

Q. Were they critical? A. Well, certainly they were critical.

The paper states that it was suggested at that meeting on TV that issues like the Vietnamese war should be discussed in the classroom where it was organized under some discipline. The paper quotes me as saying how much control can you have and still have a democratic country? I assume I said that. I would say it again, I think it is a good statement. I say this against the background of

seeing the Japanese school system, where there is a degree of control that I think does preclude the kind of democracy that I am interested in.

The people actually excluded from school were not members of the S.D.S. They were not, nor were they directed by the S.D.S., nor were they organized by the S.D.S. They were not implementing the program of the S.D.S. That is a false assertion. The meeting which advocated the wearing of the black arm bands was not an official S.D.S. meeting. You see this is not a program of the S.D.S. as it came to pass in the Eckhardts' home. It is not that kind of a situation. This group which included persons who belong to S.D.S. made this proposal to wear black arm bands, but that does not make it an S.D.S. proposal, not out of that group. The group that appeared at school with black arm bands were not carrying out the thing that had been advocated by S.D.S., because this was not advocated by the S.D.S. That is a false assertion.

I am saying that these youngsters carried out a program of the S.D.S. is a false assertion. I am saying that it is a falsehood. They were wearing black arm bands. I have no knowledge of the S.D.S. advocating the wearing of black arm bands. If you mean by S.D.S. the organization itself, I don't know that much about the organization.

The Women's International League for Peace and Freedom is a Women's organization for peace and freedom, what it says it is. Mrs. Eckhardt has an office in it. These two meetings that were held on the 11th and 12th of December were both at the Eckhardts' home.

I was present at a meeting on December the 19th, 1965. I believe it was a Sunday night meeting where some fifty persons were present to discuss fighting the suspension of

the students for wearing black arm bands. It was held at the Friend's House, those are my offices at 4211 Grand. The meeting was called, as I recall, by a group of students. I suppose they happened to meet at the Friend's House because they asked us if they could meet there and we said they could. I was at the meeting, I was there late, there was a lot of discussion and I don't know whether you could call it a strategy meeting or not. There was a lot of concern about the situation and many people were, you know, involved in the meeting, and at the meeting they were just discussing the situation. This was just ahead of the Tuesday meeting on the 21st where the group appeared before the School Board. Craig Sauer (believe should be Sawyer) was at this meeting. As I recall, he represented the I.C.L.U., Civil Liberties Union. I have no record of the count of the people who attended that meeting, my guess is, more than twenty and under forty. I don't know.

I would say it was held at Friend's House, 4211 Grand, that is a distinction by the way, see the American Friends Service Committee uses space at Friend's House. It is a big building at 4211 Grand. It is occupied by the local Friends Meeting and then the officers of the A.F.S.C. are there but other groups meet there, not infrequently. I don't have any record of any discussion there that night about the fact that some of the wearers of the arm bands having been slugged.

I called the meeting on December 19, 1965, because my youngsters were having a problem and some other youngsters were having a problem and I thought the parents ought to get together and the youngsters and discuss the situation. I asked my children the names as I recall, I asked my children the names of the other students and telephoned their parents.

Q. I ask you if this helps refresh your recollection as to the origin of the wearing of the arm bands and I'm referring to the newspaper of December 22, 1965; it says Mrs. Eckhardt is president of the Des Moines Chapter of the Women's International League for Peace and Freedom which joined with S.D.S. in recommending that the arm bands be worn. Now, does that refresh your recollection as to the origin? A. Where is this reported for now?

Q. This is reported in the paper on December 22, 1965. A. Well, will you repeat the question now?

(Whereupon, the last question was read by reporter.)

A. If the Women's International League for Peace and Freedom had a meeting and decided this, I have no knowledge of that decision of that group.

Q. Were you familiar with the report in the paper? A. I read the paper, but the implication of the paper as I understand it is not that this group met in any official way to instigate the wearing of the arm bands.

I had previously spoken against the U. S. policy in Viet Nam. I had spoken at a meeting at the post office in October.

Q. Do you agree with the statement that Professor Sauer (Sawyer) made out at the School Board Meeting that he would support the freedom to wear a Nazi arm band or arm bands saying "down with the school board"? Is that your idea of freedom, that constitution— A. Oh, that's a long question, I'd rather not answer that.

Q. You don't have an answer to it? A. I didn't say I didn't have an answer to it. I said I don't want to answer it now.

Q. Well, for what reason? A. Well, it's an involved question.

Q. Can I make it simpler then? Did you say that you would subscribe to the right to wear a Nazi arm band in school?

(The question was not answered on the advice and instructions from counsel and similar questions were not answered for the same reason.)

When Mary Beth wore the arm band she attended Warren Harding Junior High. I knew of her going over with the arm band. I went over to get her because either she or the school called me. As I recall, Mary had been sent home the day before and we were asked to come to the school. I didn't go and get her the day before. I think she came home on her own.

Portion of the deposition of JOHN TINKER, the whole thereof having been admitted in evidence as defendants' Exhibit 7.

I attended the meeting of some fifty people at the building where my father's office and there were some accounts by some of the students there as to physical violence that had been inflicted upon them over the wearing of these arm bands. Either Bruce Clark or Ross said somebody had struck him. It could have been both of them. I was there and recall hearing somebody say that.

Portion of the deposition of CHRISTOPHER ECKHARDT, the whole of said deposition having been admitted in evidence as defendants' Exhibit 5.

Q. Well, maybe I'm wrong. I want to apologize to you. I think we are both confused, if the newspaper article is right. The newspaper article says the meeting at the Friends' Service Committee at 4211 Grand Avenue was December 19th, Sunday night, 1965, and this is the meeting that I have reference to, and I think it's the meeting you have reference to. A. Right.

Q. Not a meeting at your house. A. Okay, yes.

Q. And the newspaper account says that there were about fifty persons there. A. Yes. Well, see, there was—let's see, I also thought there was a meeting Thursday, but maybe there wasn't. Maybe that's the meeting I'm thinking of.

Q. Well, at any rate according to the newspaper Ross Peterson and Bruce Clark talked about some violence or threats of violence or threats of violence that happened to them or others during the week prior. Do you recall any talk about that? A. Well, Bruce and Ross had worn black suits on Thursday or Friday and they went down to the Student Center down by Roosevelt Shopping Center, right there, and they had gone down there and there was some student who did not attend Roosevelt. I don't know his name. He had attended Roosevelt and was kicked out or something, and he did push them or something like that.

Q. Well, my specific question was whether you recall them telling about it there. A. Yes.

Q. And there was talk about what you should or should not do relative to picketing school board meetings; do you recall that? A. No.

Q. Well, what else do you recall about the meeting, if anything? A. Well, the one student had told how when he had worn the armband how nothing happened at his school.

Q. Is that Perry Hutchison at Lincoln? A. Right, right.

Q. That's the party you were trying to think of previously, is it not? A. Yes.

Q. Well, according to the newspaper article Mrs. Sheri Hutchison of 1228 Birch Lane said her son Perry had worn an armband to Lincoln and was not suspended. "He took it off when told by a teacher that it was illegal." Now, that's what the newspaper report said. Do you recall that? A. Well, he wasn't able to make it that night. She said he would have came but she thought it was for parents only, and I think he had worn it one—he thought it began on Monday or something, and he had worn it a full day at school and then had maybe worn it Tuesday and then Wednesday, let's see, Tuesday or Wednesday the principals had their meeting and he had worn it a day and was told to take it off so he took it off, but he had worn it for a day.

Q. So this was before the principals had had any meetings or announced or decided on any policy at all? A. Right.

Q. That's your understanding of it anyway? A. Right.

Q. You never talked to him personally about it, have you, or have you? A. No. I don't think so.

The defendants' Exhibit One (1), admitted into evidence, is as follows:

WE MOURN

"ATTENTION STUDENTS"

Some high school and college students in Iowa who are interested in expressing their grief over the deaths of soldiers and civilians in Vietnam will fast on Thursday,

December 16th. They will also wear black arm bands starting on that same day, December 16th. The National Liberation Front (Vietcong) recently proposed a 12-hour truce on Christmas Eve. The United States has not yet replied to their offer. However, Senator Robert Kennedy has suggested that the truce be extended indefinitely pending negotiations. If the United States takes this action the arm bands will be removed. If it does not the bands will be worn throughout the holiday season and there will be a second fast on New Year's Day. High school and college students are also encouraged to forego their usual New Year's Eve activities and meet together to discuss this complex war and possible ways of ending the killing of Vietnamese and Americans.

A meeting in Des Moines on New Year's Eve will be held at the home of Bruce Clark, 925—29th, for further information call his home. The meeting is being sponsored by Liberal Religious Youth the youth organization of the Unitarian Universalist Association. All students interested in saving lives and ending the war in Vietnam are urged to attend.

PLEASE COME!

DEFENDANT'S EXHIBIT 2

D. M. Schools Ban Wearing of Viet Truce Armbands

(Register 12-15-65) By Jack Magarrell

Des Moines school officials said Tuesday that high school students will not be permitted to wear black armbands at school in support of a truce in Viet Nam.

A few students at Roosevelt High School were reported planning to wear the armbands Thursday.

Several groups of Iowa college students opposed to U. S. policy in Viet Nam have designated Thursday as a day of fasting and wearing black armbands to encourage U. S. acceptance of a Viet Cong offer of a 12-hour cease-fire on Christmas Eve.

Roosevelt Principal Charles Rowley refused to comment on the school's attitude toward the armbands.

E. Raymond Peterson, director of secondary education, met with high school principals Tuesday to assure a uniform policy.

Questioned about the policy, Peterson said, "For the good of the school system, we don't think this should be permitted."

"The schools are no place for demonstrations," Peterson said. "We allow for free discussion of these things in classes."

Peterson said the decision not to allow students to wear the black armbands was based on a general school policy against "anything that is a disturbing situation within the school."

School officials believe the educational program would be disturbed by the students wearing armbands, he said.

Peterson said the meeting with high school principals dealt with several other matters which school officials considered more important than a proposal by "eight or 10 students" to "get publicity" by wearing armbands.

DEFENDANT'S EXHIBIT 3

PROPOSED POLICY FOR SECONDARY PRINCIPALS REGARDING STUDENT CONDUCT

The legal Code of Iowa makes specific provisions for the suspension or expulsion of a student from the public schools of the state. One of the valid reasons for suspension and expulsion is conduct detrimental to the best interests of the school. (Chapter 282.4 of the Iowa Code)

One of the most important responsibilities of a building principal is to help establish and maintain an atmosphere within the school which will allow teachers to achieve the primary purpose of public school education—that of educating each person to his maximum potential.

Since the best interests of the school may be served only through the establishment and maintenance of an orderly, disciplined faculty and student body it is deemed essential that school administrators be delegated, and assume, the responsibility of establishing and maintaining such an environment. Conduct by teachers or students which tend to disrupt the orderly conduct of the everyday educational program of the school, or which are considered by school administrators as likely to do so, must therefore be of immediate and urgent concern. When a resolution of problems of acceptable conduct are impossible through personal conference with a student and his parents, a student may be suspended from school to provide an opportunity for all concerned to seek a solution to the problem of conduct without causing a continued disturbance or disruption of the educational program of the school.

It is our desire that all students in our schools present such an appearance and so conduct themselves that the

school attended can always be proud of them; however, should the conduct or dress of a student be such that it is believed that person or others will be distracted from the earnest pursuit of the educational purposes of the day and the moment it is expected that appropriate disciplinary action will be necessarily be forthcoming.

DEFENDANT'S EXHIBIT 4

DES MOINES PUBLIC SCHOOLS
Department of Secondary Education

December 29, 1965

TO: Dwight M. Davis, Superintendent

FROM: E. Raymond Peterson, Director of Secondary Education

SUBJECT: EVENTS LEADING UP TO BANNING OF ARM BANDS

The national news media indicated the arm band's original intent was in protest to U. S. government policy in Viet Nam. Later, it was changed to "mourning all the dead." Then, it included pressure for a Christmas truce.

Monday, December 13, Mr. Donald Haley, journalism teacher at Roosevelt, asked Ross Peterson, a student in Roosevelt, to talk to Dr. Rowley, Principal of Roosevelt, regarding an article that he would like to write and have printed in the school paper relating to Viet Nam. Not being able to find Dr. Rowley at that moment, Ross Peterson called Dr. Mitchum asking his opinion about the wearing of arm bands and the publishing of an article in the school paper related to it. Dr. Mitchum asked the student to hold up on this article until someone could talk to him.

Following this telephone conversation Dr. Mitchum contacted me and after some consultation with Dr. Davis, it was decided that I would call a meeting of the senior high school principals for 7:45 A.M. Tuesday, December 14, to ask them their suggestions for handling the wearing of black arm bands which was understood to take place on Thursday, December 16. All of the five senior high school principals were in agreement to follow the procedure as was later outlined in the board minutes of the meeting of December 21, 1965. The decisions to which the principals came was the same as that to which Dr. Davis, Dr. Mitchum, and I had come the day before. The principals made this decision without the knowledge of how the central office felt.

After talking to the principals, I called Dr. Mitchum to see if he wanted to talk to the student, Ross Peterson, or if he wanted me to talk to him. He suggested that since I was at Roosevelt, that I should go ahead and talk to the student. Dr. Rowley and I talked to the student and we felt that it was a very friendly conversation, although we did not feel that we had convinced the student that our decisions was a just one.

Following the announcement to the students that arm bands would not be permitted, one of the students apparently contacted the newspaper. The reporter then contacted the school administrators for information. The reporter was asked not to write a story.

The secondary principals were called to meet on Thursday, December 23, to see if they thought it would be wise to alter the previous decision. All who were present felt that we had made a wise decision in spite of the public concern over one small aspect of our school program. The following reasons were given:

1. A former student of one of our high schools was killed in Viet Nam. Some of his friends are still in school and it was felt that if any kind of a demonstration existed, it might evolve into something which would be difficult to control.

2. The schools hold appropriate assemblies on Veteran's Day to honor the dead. Also, Memorial Day is recognized.

3. The principals were following standard procedure for what is considered inappropriate dress, haircuts or other actions that attract attention.

4. Students at one of the high schools were heard to say they would wear arm bands of other colors if the black bands prevailed.

5. Principals felt that since the schools are made up of a captive audience, the other students should not be forced to view the demonstrations of a few.

6. One principal reported a Nazi arm band on a boy who came to school several weeks ago. When asked to remove it, he complied.

7. These students were sent home from school until such time as the students were willing to return without the arm band. No student was suspended for a specified length of time.

The subject of petitions came up for discussion. It appears that petitions are picked up if there is any disturbance. If they are of an internal nature, they are handled within the school. One of the principals stated that the person who originated one of the petitions that contained approximately 20 signatures came to him and asked that he destroy the petition. This petition was not addressed to any official or persons. There was another petition in support of the teachers who were named at the December 21 board meeting, and this petition was also picked up.

At the next principals' meeting, the principals will be informed that the students who were sent home for the wearing of arm bands will be permitted to make up the work missed without penalty.

The following students were suspended:

Bruce Clark—Roosevelt
Chris Eckhardt—Roosevelt
Christine Singer—Roosevelt
Mary Beth Tinker—Harding
John Tinker—North

On September 1, 1966, the Court made the following memorandum opinion.

The plaintiffs instituted this action against the Des Moines Independent Community School District, its Board of Directors and certain administrative officials and teachers thereof in an attempt to recover nominal damages and obtain an injunction pursuant to the provisions of 42 U.S.C., § 1983. Jurisdiction exists under 28 U.S.C., § 1343.

The events giving rise to this controversy took place in December, 1965. During the second week of that month, it came to the attention of certain school officials that several students intended to wear black arm bands for the purpose of expressing their beliefs relating to the war in Viet Nam. A regulation was then promulgated by officials of the defendant school district prohibiting the wearing of arm bands on school facilities. After the regulation had been established, the plaintiffs, John Tinker, Mary Beth Tinker and Christopher Eckhardt, wore black arm bands

to their respective schools.[1] Each of the plaintiffs testified that their purpose in wearing the arm bands was to mourn those who had died in the Viet Nam war and to support Senator Robert F. Kennedy's proposal that the truce proposed for Christmas Day, 1965, be extended indefinitely. The plaintiffs herein were all aware of the regulation prohibiting the wearing of arm bands when they wore them to school. After being in their schools for varying lengths of time, each plaintiff was sent home by school officials for violating the regulation prohibiting the wearing of arm bands on school premises. Each plaintiff returned to school following the Christmas holidays. They did not wear arm bands at that time.

The question which now must be determined is whether the action of officials of the defendant school district forbidding the wearing of arm bands on school facilities deprived the plaintiffs of constitutional rights secured by the freedom of speech clause of the first amendment. An individual's right of free speech is protected against state infringement by the due process clause of the fourteenth amendment. *Gitlow* v. *New York*, 268 U.S. 652 (1925). The wearing of an arm band for the purpose of expressing certain views is a symbolic act and falls within the protection of the first amendment's free speech clause. *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624 (1943); *Stromberg* v. *California*, 283 U.S. 359 (1931). However, the protections of that clause are not absolute. See, *e.g.*, *Dennis* v. *United States*, 341 U.S. 494, 503 (1951); *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Pocket Books, Inc.* v.

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1. Plaintiff John F. Tinker, age 15, attended North High; plaintiff Mary Beth Tinker, age 13, attended Warren Harding Junior High; plaintiff Christopher Eckhardt, age 15, attended Roosevelt High; Paul and Hope Tinker, age 8 and 11 respectively, younger brother and sister of plaintiffs John and Mary Beth Tinker also wore arm bands to their respective schools.

Walsh, 204 F. Supp. 297 (D. Conn. 1962). The abridgement of speech by a state regulation must always be considered in terms of the object the regulation is attempting to accomplish and the abridgement of speech that actually occurs. "In each case (courts) must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." *Dennis v. United States*, 183 F.2d 201, 212 (2d Cir. 1950).

Officials of the defendant school district have the responsibility for maintaining a scholarly, disciplined atmosphere within the classroom. These officials not only have a right, they have an obligation to prevent anything which might be disruptive of such an atmosphere. Unless the actions of school officials in this connection are unreasonable, the Courts should not interfere.

The Viet Nam war and the involvement of the United States therein has been the subject of a major controversy for some time. When the arm band regulation involved herein was promulgated, debate over the Viet Nam war had become vehement in many localities. A protest march against the war had been recently held in Washington, D. C. A wave of draft card burning incidents protesting the war had swept the country. At that time two highly publicized draft card burning cases were pending in this Court. Both individuals supporting the war and those opposing it were quite vocal in expressing their views. This was demonstrated during the school board's hearing on the arm band regulation. At this hearing, the school board voted in support of the rule prohibiting the wearing of arm bands on school premises. It is against this background that the Court must review the reasonableness of the regulation.

A subject should never be excluded from the classroom merely because it is controversial. It is not unreasonable, however, to regulate the introduction and discussion of such subjects in the classroom. The avowed purpose of the plaintiffs in this instance was to express their views on a controversial subject by wearing black arm bands in the schools. While the arm bands themselves may not be disruptive, the reactions and comments from other students as a result of the arm bands would be likely to disturb the disciplined atmosphere required for any classroom. It was not unreasonable in this instance for school officials to anticipate that the wearing of arm bands would create some type of classroom disturbance. The school officials involved had a reasonable basis for adopting the arm band regulation.

On the other hand, the plaintiffs' freedom of speech is infringed upon only to a limited extent. They are still free to wear arm bands off school premises. In addition, the plaintiffs are free to express their views on the Viet Nam war during any orderly discussion of that subject. It is vitally important that the interest of students such as the plaintiffs in current affairs be encouraged whenever possible. In this instance, however, it is the disciplined atmosphere of the classroom, not the plaintiffs' right to wear arm bands on school premises, which is entitled to the protection of the law.

Plaintiffs cite two recent opinions from the Court of Appeals for the Fifth Circuit in support of their position. *Burnside* v. *Byars*, Civil No. 22681, 5th Cir., July 21, 1966; *Blackwell* v. *Byars*, Civil No. 22712, 5th Cir., July 21, 1966. These cases involved the wearing of "freedom buttons" in Mississippi schools. In holding in one of the cases that the school regulation prohibiting the wearing of such but-

tons was not reasonable, the Court stated that school officials "cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Burnside* v. *Byars, supra,* at 9. While the decisions of the Court of Appeals for the Fifth Circuit are entitled to respect and should not be brushed aside lightly, they are not binding upon this Court. *John Deere Co.* v. *Graham,* 333 F.2d 529 (8th Cir. 1964). After due consideration, it is the view of the Court that actions of school officials in this realm should not be limited to those instances where there is a material or substantial interference with school discipline. School officials must be given a wide discretion and if, under the circumstances, a disturbance in school discipline is reasonably to be anticipated, actions which are reasonably calculated to prevent such a disruption must be upheld by the Court. In the case now before the Court, the regulation of the defendant school district was, under the circumstances, reasonable and did not deprive the plaintiffs of their constitutional right to freedom of speech.

The plaintiffs' request for an injunction and nominal damages are denied. Judgment will be entered accordingly.

Dated this 1st day of September, 1966.

On September 1, 1966, the following Judgment Entry was made:

Pursuant to memorandum opinion filed this date, which pursuant to Rule 52(a) constitutes this Court's findings of fact and conclusions of law.

IT IS ORDERED AND ADJUDGED that plaintiff's complaint is dismissed at plaintiff's cost.

Dated this 1st day of September, 1966.

/s/ Roy L. Stephenson
Chief Judge

On September 1, 1966, the following Notice of Appeal was filed:

Notice is hereby given that all plaintiffs in this action hereby appeal to the United States Court of Appeals for the Eighth Circuit from the judgment entered in this action on September 1, 1966.

Jesse, Le Tourneau & Johnston
By /s/ Dan Johnston
Attorney for Plaintiffs
917 Savings & Loan Building
Des Moines, Iowa

(Opinion)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 18,642

John F. Tinker and Mary Beth Tinker, Minors, by Their Father and Next Friend, Leonard Tinker, and Christopher Eckhardt, Minor, by His Father and Next Friend, William Eckhardt,
Appellants,

v.

The Des Moines Independent Community School District, The Board of Directors of the Des Moines Independent Community School District, Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R. Haydon, Merle F. Schlampp, Dwight Davis, Elmer Betz, Gerald Jackson, Melvin Bowen, Donald Wetter, Chester Pratt, Charles Rowley, Raymond Peterson, Richard Moberly, Vera Tarmann, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory,
Appellees.

Appeal from the United States District Court for the Southern District of Iowa.

[November 3, 1967.]

Before VOGEL, Chief Judge; VAN OOSTERHOUT, MATTHES, BLACKMUN, MEHAFFY, GIBSON, LAY and HEANEY, Circuit Judges, sitting en banc.

PER CURIAM.

This is an appeal from a judgment entered September 1, 1966, by the United States District Court for the Southern District of Iowa, Central Division, dismissing plaintiffs' complaint, based upon 42 U.S.C.A. § 1983, seeking an injunction and nominal damages against defendants, the Des Moines Independent Community School District, the individual members of its Board of Directors, its superintendent and various principals and teachers thereof, for suspending plaintiffs from school for wearing arm bands protesting the Viet Nam war, in violation of a school regulation promulgated by administrative officials of the School District proscribing the wearing of such arm bands. 258 F.Supp. 971. Following argument before a regular panel of this court, the case was reargued and submitted to the court en banc.

The judgment below is affirmed by an equally divided court.

A true copy

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

Judgment

United States Court of Appeals
For the Eighth Circuit.

No. 18,642. September Term, 1967.

John F. Tinker and Mary Beth Tinker, Minors, by their father and next friend, Leonard Tinker, and Christopher Eckhardt, Minor, by his father and next friend,.

Appellants,

vs.

The Des Moines Independent Community School District, The Board of Directors of the Des Moines Independent Community School Distri , Ora E. Niffenegger, Mrs. Mary Grefe, Arthur Davis, L. Robert Keck, George Caudill, John R.Haydon, Merle F. Schlampp, Dwight Davis, Elmer Betz,Gerald Jackson, Melvin Bowen, Donald Wetter, Chester Pratt, Charles Rowley, Raymond Peterson, Richard Moberly, Vera Tarmann, Leo Willadsen, Donald Blackman, Velma Cross, and Ellsworth E. Lory.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Judgment of the said District Court, in this cause, be, and the same is hereby, affirmed by an equally divided Court.

November 3, 1967.

(Order staying issuance of Mandate pending certiorari proceedings in Supreme Court, U.S.)

United States Court of Appeals
For the Eighth Circuit

No. 18,642. September Term, 1967

John F. Tinker and Mary Beth Tinker, minors, etc.,	)	
Appellants,	)	Appeal from the United States
vs.	)	District Court
	)	for the Southern
The Des Moines Independent Community School District, et al.	)	District of Iowa.

On Consideration of the motion of the appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

November 17, 1967.

(Clerk's Certificate)

United States Court of Appeals
For the Eighth Circuit.

I, Robert C. Tucker, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the Printed Record filed by appellants; the Supplemental Printed record of appellees, on which the appeal from the United States District Court for the Southern District of Iowa was heard and determined in said Court of Appeals, and also Proceedings in said Court of appeals consisting of Opinion and Judgment entered thereon, and Order staying issuance of mandate of said Court of Appeals pending Certiorari proceedings in the Supreme Court of the United States, in the case of John F. Tinker, et al. Appellants, vs. The Des Moines Independent Community School District, et al., Appellees, No. 18,642, as full, true and complete as the originals thereof remain on file and of record in my said office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit at office in the City of St. Louis, Missouri, this seventeenth day of November A. D. 1967.

Robert C. Tucker,
Clerk of the United States
Court of Appeals for the
Eighth Circuit.